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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/081,382   | 02/22/2002  | Curt L. Anderson     | TILA-01075US1         | 9693             |
| 23910  | 7590        | 07/20/2004           | EXAMINER              |                  |
| FLIESLER MEYER, LLP<br>FOUR EMBARCADERO CENTER<br>SUITE 400<br>SAN FRANCISCO, CA 94111 |             |                      | HYLTON, ROBIN ANNETTE |                  |
|  |             |                      | ART UNIT              | PAPER NUMBER     |
|  |             |                      | 3727                  |                  |

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/081,382

Applicant(s)

ANDERSON ET AL. cc

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,5,6,11,13,15,41 and 48 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,9,28 and 49 is/are allowed.
- 6) ☒ Claim(s) 4,8,10,12,14,16-20,23,25,26,29-40,42-45 and 50 is/are rejected.
- 7) ☒ Claim(s) 3,21,22,24,27,46 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/19/04, 4/21/03, 8/12/02, 5/20/02</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1,2,5,6,11,13,15,41,48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 7, 2004.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The claims should include at least one technical, or inventive, feature of the claimed instant invention.

3. The abstract of the disclosure is objected to because it contains "the present invention relates generally to". Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

4. Claims 3,17,19,21,23, and 25 are objected to because of the following grammatical informalities:

- Claim 3 inherently contains the phrase "to surface" of claim 1;
- In claim 17, line 3, "provide thorough";
- In claim 17, line 4, "provide through";
- In claim 19, line 2, "membrane a plurality";
- In claim 21, line 7, "to surface";
- In claim 23, line 3, "provide thorough"; and
- In claim 25, line 2, "membrane a plurality".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. Claims 4,8-10,12,14,16,19,20,25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

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matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 4 recites the limitation "said one raised members" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said one raised members" in line 2. There is insufficient antecedent basis for this limitation in the claim.

It is unclear in claims 12 and 14 if the side wall of a raised member varies in height or of several of the raised member vary in height with respect to the others.

It is unclear how the membrane in claims 20 and 26 "is a ring of upstanding tabs".

It is unclear how the membrane in claims 19 and 25 is a plurality of upstanding tabs.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 31-40 and 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Chuang (US 5,405,038). See figure 3.

8. Claims 17,18,23,24,29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Miramon (US 5,546,997). The members **20** and **22** rotate about pivot points seen in figure 4.

***Allowable Subject Matter***

9. Claim 22,24,27,46, and 47 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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10. Claims 3,4,8,10,12,14,21,23,25,26,50 appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph and/or the claim objections, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 7,9, 28,49 allowed over the art of record.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

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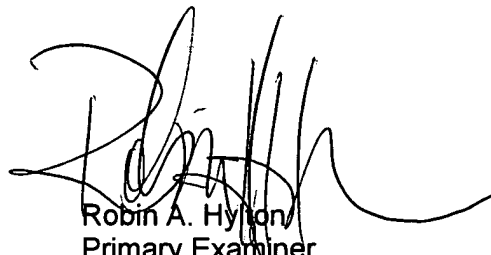
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
July 17, 2004



Robin A. Hylton  
Primary Examiner  
GAU 3727